**David G. Cubitt and Brenda Cubitt, a California Partnership d/b/a Grass Valley Grocery Outlet *and* United Food & Commercial Workers Union, Local 588, United Food & Commercial Workers International Union, AFL–CIO.** Cases 20–CA–30479–1 and 20–RC–17087

March 28, 2003

## DECISION, ORDER, AND DIRECTION OF THIRD ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On October 30, 2002, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent, the General Counsel, and the Charging Party filed answering briefs. The Respondent also filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, David G. Cubitt and Brenda Cubitt, a California Partnership, d/b/a Grass Valley Grocery Outlet, Grass Valley, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Engaging in surveillance of employees' meetings or discussions with union representatives in the parking lot during nonwork time, or at other times and places where such discussions may lawfully be conducted."

2. Substitute the following for paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its facility in Grass Valley, California, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions were filed to the judge's dismissal of complaint allegations that the Respondent sought to influence its employees' votes in the rerun election by granting them Christmas bonuses in various amounts, providing them with a free bar tab at the annual Christmas party, and by promising employee Cox a 50-cent an hour wage increase.

We agree with the judge that the Respondent interrogated employee Cox in violation of Sec. 8(a)(1) by the statement made to him by its agent Dorn that "I hear that you're voting for the union . . . I heard from the boys, the boys that used to work there [that you are] a strong leader in the union." The statement, as properly found by the judge, constituted an unlawful effort to elicit from Cox whether he supported the Union. See, e.g., *Clinton Electronics Corp.*, 332 NLRB 479, 480 (2000). Further, under the Board's test for determining the lawfulness of interrogations, the statement was unlawful for the additional reasons that Cox was not an open union supporter and, in fact, attempted to conceal his union support as evidenced by his reply to Dorn's statement that he was a strong union leader: "I don't know where you heard this from, because I didn't repeat it to nobody." *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

In cross-exceptions the General Counsel requests that the Board should additionally find that Dorn's statement constituted an impression of surveillance violation. Members Liebman and Walsh decline this request. In their view, the General Counsel, in orally amending the complaint at trial, did not seek separate findings of unlawful interrogation and impression of surveillance for the statement made by Dorn. Rather, the amendment was phrased in alternative language and, consistent with that language, Members Liebman and Walsh, having found the statement constitutes unlawful interrogation, deem it unnecessary to find an additional violation stemming from the same statement. Chairman Battista notes that the General Counsel alleged that the conduct constituted interrogation "and/or" an impression of surveillance. Thus, in the Chairman's view, it is at least arguable that the General Counsel was alleging, in the alternative, that the conduct constituted two separate violations *or* at least one violation. However, even assuming that this is what was intended, Chairman Battista concludes that Dorn's statement does not constitute an impression of surveillance violation.

[2] The General Counsel, in cross-exceptions, contends that the judge erred in failing to specify in his recommended Order that the conduct engaged in by the Respondent's Doug Cubitt in the store parking lot constituted unlawful surveillance. We find merit in the cross-exception. The parking lot incident was alleged in the complaint as unlawful surveillance, the judge's factual findings support this violation, and indeed, the judge found that the Respondent violated Sec. 8(a)(1) "as alleged." Therefore, we shall modify the judge's recommended order accordingly and issue a new notice to employees. We shall also modify the recommended Order to conform to *Excel Container, Inc.*, 325 NLRB 17 (1997).

ployed by the Respondent at any time since December 14, 2001."

3. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election in Case 20–RC–17087 shall be set aside and this case is remanded to the Regional Director of Region 20 to conduct a third election at a time and place to be determined by him.

[Direction of Third Election omitted from publication.]

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT question you regarding your interest in or activity on behalf of United Food and Commercial Workers Union, Local 588, or any other labor organization.

WE WILL NOT engage in surveillance of your meetings or discussions with union representatives in the parking lot during nonwork time or at times or places where such meetings or discussions may lawfully be conducted.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

GRASS VALLEY GROCERY OUTLET

*Jonathan J. Seagle, Esq.,* for the General Counsel.
*Michael P. Oates Esq. (Hunton & Williams),*of Richmond, Virginia, for the Respondent.
*Bob Tiernan, Esq.,* of Lake Oswego, Oregon, for the Respondent.
*Timothy Sears, Esq. (Davis, Cowell & Bowe, LLP),* of San Francisco, California, for the Union.

## DECISION

### STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice of hearing in this matter that was held before me in Grass Valley, California, on July 2, 2002. The original charge was filed by United Food & Commercial Workers Union, Local 588, United Food & Commercial Workers International Union AFL–CIO (Union) on December 18, 2001. The Union filed a first amended charge on March 15, 2002. Thereafter, on March 19, 2002, the Regional Director for Region 20 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations by David G. Cubitt and Brenda Cubitt, a California Partnership, d/b/a Grass Valley Grocery Outlet (Respondent) of Section 8(a)(1) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

Pursuant to a representation petition in Case 20–RC–17087 filed by the Union on February 28, 1995, and a Decision and Direction of Election issued by the then Acting Regional Director on April 14, 1995, an election was on June 12, 1995. The Union filed timely election objections, and these objections, along with certain challenged ballots, were consolidated for purposes of hearing before an administrative law judge with a previously issued complaint and notice of hearing issued by the Region in Cases 20–CA–26685 and 20–CA–26812. The hearing was held between April and December 1997, and the administrative law judge issued his decision on December 31, 1998. Thereafter, on December 15, 2000, the Board issued its decision in *Grass Valley Grocery Outlet*, 332 NLRB 1449, and, finding inter alia that certain of the election objections were meritorious, set aside the election and remanded the matter to the Regional Director for the purpose of conducting a rerun election. By letter dated November 29, 2001, the Regional Director advised the parties that the second election would be conducted on December 19, 2001. This election was conducted as scheduled, and the tally of ballots reflects that 16 cast votes for the Union, 20 cast votes against the union, and that the 3 challenged ballots were not determinative. The Union again filed charges and election objections, and on April 26, 2002, the Regional Director issued a report on objections in which he consolidated the election objections with the aforementioned previously issued unfair labor practice complaint for hearing before an administrative law judge.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, a letter/brief has been received from counsel for the General Counsel (General Counsel), and counsel for the Respondent and Union have submitted briefs. On the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following.

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent is a California partnership with a place of business located in Grass Valley, California, where it is engaged in the operation of a retail grocery store. In the course and conduct of its business operations the Respondent annually derives gross revenues in excess of $50,000, and annually purchases and receives at its Grass Valley, California facility products, goods, and materials valued in excess of $50,000

which originate from points outside the State of California. It is admitted and I find that the Respondent is and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## III. ALLEGED UNFAIR LABOR PRACTICES AND ELECTION OBJECTIONS

### *A. Issues*

The principle issues in this proceeding are whether the Respondent violated Section 8(a)(1) of the Act by unlawful interrogation and/or creating the impression of surveillance, by promising a raise to employees, and by granting a Christmas bonus and other benefits to employees. The election objections that remain in issue are identical to the aforementioned unfair labor practice allegations.[1]

### *B. Facts and Analysis*

By letter dated November 29, 2001, the parties were officially notified by the Regional Director that the rerun election would be conducted on December 19, 2001. The Respondent's annual Christmas party was held on December 16, 2001. I credit the testimony of David Cubitt, an owner of the Respondent, that he scheduled the annual Christmas party sometime during the first part of October, well before the time he learned that there was to be a rerun election.[2] And further, that when he scheduled the party he advised the restaurant where the party was to be held and that there would be an open bar for a 1-hour period prior to the dinner. Moreover, I credit Cubitt's testimony that he decided upon the amount of the annual Christmas bonus on November 21, 2001, prior to the time he learned that there was to be a rerun election; thus, on November 21, Cubitt sent the following note to his accountant:

> It's Christmas Bonus time again, and Brenda and I decided to give each full time employee $125.00 and every part-timer $50.00. As we did last year, please prepare the Separate checks for the Christmas party (December 16th).

It is alleged in the complaint that the Respondent violated Section 8(a)(1) of the Act by granting its employees "a $100 Christmas bonus." The record evidence shows that the Respondent had granted Christmas bonuses in various amounts since 1995 when Cubitt became an owner of the Respondent, and that the bonuses were always handed out at the annual Christmas party. In 2000, five department heads, who are included in the unit, received a $100 bonus, 17 full-time employees received a $50 bonus, and 13 part-time employees received a $25 bonus. In 2001, all full-time employees, including department heads, received $125, and all part-time employees received $50. I credit Cubitt's testimony that, although the employees were given no reason for the increased bonus amount, the reason for the increase in bonus was because 2001 was the best year that the Respondent had experienced.

While it is reasonable to assume that some employees may have interpreted the relatively large increase in the bonus amount as an inducement to vote against the Union in the election which was to be held just 3 days after they received the bonus, nevertheless the Respondent is required only to conduct its business operations vis-à-vis its employees as it would have done in the absence of a union election. See *Comcast Cablevision of Philadelphia*, 313 NLRB 220, 248 (1993). This, I find, it did. Indeed, at the time the Respondent determined the amounts of the Christmas bonus, some 10 months after the Board's determination that a rerun election was warranted, it was the Respondent's understanding that there would not be a rerun election. I shall dismiss this allegation of the complaint and I shall recommend that this election objection be dismissed.

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by providing its employees "with an unlimited, free bar tab" at the Christmas party that was held at a local restaurant. As noted above, the Respondent did purchase drinks for the employees for a 1-hour period prior to the dinner. The record evidence shows that at the Christmas party in 2000, the Respondent passed out logo sweatshirts to each employee, for which it paid about $22 each. At the Christmas party in 2001 it did not distribute any gifts; rather, as noted, it paid the bar tab for 1 hour, before and after which the employees paid for their own libations. David Cubitt, whom I credit, testified that in fact the bill for the sweatshirts in 2000 exceeded the bar tab in 2001 by a considerable amount. For the same reasons as stated previously, I shall dismiss this allegation of the complaint and I shall recommend that this election objection be dismissed.

Michael Cox has been employed by the Respondent for 2 years. He is a janitor/porter, and is included in the bargaining unit. About a week before the election Cox had a conversation with Blain Dorn concerning the union. Dorn was in the process of being trained to operate his own store, and it was stipulated that he is an agent of the Respondent. Dorn came up to him and said, according to Cox, "I hear that you're voting for the union." Cox asked how he found this out. Dorn replied, "I heard from the boys, the boys that used to work there," that Cox was a "strong leader in the union." Cox replied that he didn't know where Dorn heard this because he had not made such a statement to anybody.[3]

I credit Cox and find that the statement by Dorn constituted, in effect, unlawful interrogation regarding Cox' union activity. Thus, Dorn's remarks may be reasonably understood to constitute an attempt to elicit from Cox the nature and extent of his

[1] In its brief, the Union has withdrawn its election objection alleging that the *Excelsior* list contained a relatively high number of incorrect addresses and that this hindered the Union in making house calls to the employees prior to the election.

[2] I also credit the testimony of Respondent's attorney, Bob Tiernan, that he was in touch with regional office personnel following receipt of the aforementioned Board decision and during the notice posting period, that he was advised that it did not appear there would be a rerun election because the Union was "unresponsive," and that he passed this information along to his client, David Cubitt.

[3] Dorn was not called as a witness by the Respondent; therefore Cox' testimony stands unrebutted.

support for the Union. By such conduct the Respondent has violated Section 8(a)(1) of the Act as alleged.[4]

Cox testified that the day before the election he had a conversation in the warehouse with Doug Cubitt, the owners' son and assistant manager of the store, to whom Cox reported.[5] No one else was present. Cubit said good morning, how are you doing, and then said, according to Cox, "by the way . . . if you vote no on the union, I'll personally make sure that you will get a fifty-cent raise." Cox said okay. On the next day, the day of the election, he told one other employee about this conversation with Doug Cubitt. However the record does not reflect whether or not that employee had voted prior to learning of the conversation.[6]

Cox testified that he understood that only Doug Cubitt's father had the authority to grant a raise. Cox did not get a 50-cent raise after the election. Rather, in January 2002, each of the employees received a 25-cent-per-hour raise. This raise is not alleged as violative of the Act.

Doug Cubitt denied that the foregoing conversation occurred. Rather, according to Cubitt, Cox happened to ask him for a raise as he frequently did about once a month, and Cubitt said that the company couldn't really be giving raises at this time because of the upcoming election.

It seems clear that the Respondent believed that Cox was a "strong leader in the union." Under the circumstances, it is unlikely that the Respondent would approach Cox with such an offer, as Cox could be expected to report this to the Union. Further, it would seem rather incongruous to select a union leader as the recipient of a raise in order to cause him to vote against the Union. Moreover, there are no other allegations of similar unlawful conduct involving other employees. On the other hand, I am mindful of Board precedent to the effect that due deference should be given to current employees who testify adversely to their employer.[7] On balance, weighing these two competing concerns, I conclude that the General Counsel has not sustained his burden of proof, and accordingly I shall dismiss this allegation of the complaint.

Michael Gentry is a union representative. Gentry testified that on about December 14, 2001, at about 3:30 p.m., he and another union representative, Mark Berns, were in the parking lot in front of the store. They observed four individuals heading toward their cars in the parking lot, and asked them if they were employed by the store. They acknowledged that they were employees. Gentry and Berns introduced themselves as union representatives, and asked them if they were off the clock. They all said yes. Gentry asked if they could talk to them about the union organizing program. They all said yes, and indicated that they would like to hear the Union's side of the story. Gentry and Berns began giving them information about the Union, when, according to Gentry, about 3 or 4 minutes into the conversation an individual exited from the store and approached them. He said he was there to observe their meeting. Both Gentry and Berns identified themselves as union representatives, and asked the person's name. He identified himself as Doug Cubitt, and said he was the assistant manager of the store. No one else was with Cubitt. Gentry told Cubitt that all the employees were off the clock, that the representatives were holding a "union meeting," and that as a member of management Cubitt was not invited or permitted to attend the meeting. Cubitt crossed his arms and stood there, and said, "this is company property[8] and I'm here to observe the meeting and I'm not leaving."[9]

Gentry testified that the interruption of the discussion by Cubitt had a noticeable effect on the employees: their demeanor and body language changed, and they became "a little nervous." While Cubitt remained standing there with his arms crossed staring at the employees, Gentry asked the employees if they minded continuing the discussion across the street. The employees did not consent, and said, "no, we're going to leave." Then they all got in their cars and drove off. Cubitt was there for 1 or 2 minutes.

Douglas Cubitt is grocery manager for the Respondent. Cubitt testified that he observed the union representatives approaching some four or six employees who were leaving the store after their morning shift ended at 1:30 p.m. He and the store manager, Zachary Mallette, were told by David Cubitt to go outside and tell the union representatives that they were on private property and would have to leave the parking lot. They approached the group and asked the union representatives, "Can we help you?" They said, "No, you can't help us, we're talking to the employees." Cubit said, "This is private property, if you'd like to talk to them we'd ask you to leave the property." One of the representatives said, "We'll take them across the street, would that be okay." Cubitt said that would be fine. He denied that he told the union representatives that he and Mallette were there to observe their meeting.

Store Manager Mallette testified similarly to Cubitt. Cubit, according to Mallette, did all or most of the talking. Mallette acknowledged that the two union representatives were engaged in a conversation with several of the employees, that he and Cubitt intervened in that conversation, and that as a result of this intervention the conversation or meeting broke up and the employees left.

[4] The complaint was amended at the hearing to allege that the same conduct also constitutes an impression of surveillance. It appears unnecessary to resolve this issue, as the conduct is violative of the Act in any event.

[5] It was stipulated at the hearing that Doug Cubitt is an agent of the Respondent.

[6] Cox testified that about 2 months prior to the election he had a conversation with David Cubitt concerning a wage increase. Cox asked what his chances were of getting a raise, and Cubitt replied, "Michael, to be honest with you . . . you're not worth a raise right now, you haven't proved to me that . . . you're not that good of a worker."

[7] *Molded Acoustical Products*, 280 NLRB 1394, 1398 (1986), enfd. 815 F.2d 934 (3d Cir. 1987), cert. denied 484 U.S. 925 (1987); *K-Mart Corp.*, 268 NLRB 246, 250 (1983).

[8] The Respondent's Grass Valley, California grocery store, is located in a shopping mall together with about five other adjoining business, and the parking lot is a common parking lot open to the public.

[9] Berns also testified regarding the incident, and his testimony is consistent with that of Gentry. Berns testified that prior to being interrupted by Cubitt, he and Gentry were telling the employees about the duties and responsibilities of union business representatives, and the names of other employers that had contracts with the Union.

I credit the account of the incident given by Union Representatives Gentry and Berns. However, it appears that the different scenarios depicted by the General Counsel's witnesses (Gentry and Berns) and the Respondent's witnesses (Doug Cubitt and Mallette), respectively, do not materially affect the conclusion herein that the Respondent has violated the Act. Thus, the record evidence shows that either at about 1:30 or 3:30 p.m. on December 14, 2001, two union representatives were conversing with four off-duty employees in the shopping center parking lot adjoining some five businesses including the Respondent's grocery store, when one (or two) managers of the Respondent approached the group and either stood there for the purpose of listening to the conversation or stood there until the union representatives left the parking lot. I credit the testimony of Gentry and find that the conduct of Cubitt inhibited and disrupted the discussion that the union representatives were having with the employees, thus, causing the employees to depart and precluding the union representatives from continuing the discussion and perhaps conveying information to the employees that would affect their vote in the upcoming election. It is clear, and there is no contrary evidence,[10] that the union representatives had the right to be in the shopping center parking lot[11] and had the right to converse with employees privately; and that the employees, in consenting to speak with the union representatives, were engaged in activity protected by the Act. Obviously the meeting was taking place in a public area in plain view of bystanders, and, as noted by the Respondent in its brief, there is no requirement that the Respondent refrain from observing the group.[12] However, here the Respondent's manager(s) did not simply observe the group from a reasonable distance, but rather approached the group for the very purpose of disrupting the discussion. I find that by such conduct the Respondent has violated Section 8(a)(1) of the Act as alleged.[13]

I further find that the unlawful conduct of the Respondent found herein, including the unlawful interrogation of Cox,[14] is clearly encompassed within the election objections filed by the Union, and that under the circumstances, particularly given the fact that the Respondent prevailed in the election by only four votes, the conduct of the Respondent is sufficient to warrant setting the election aside. Thus, it may not reasonably be concluded that the Respondent's conduct was de minimus and could not have affected the results of the election. See *Bon Appetit Management Co*., 334 NLRB 1042 (2001); *Westside Hospital*, 218 NLRB 96 (1975). Accordingly, I shall recommend that a third election be conducted.

## CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act as set forth herein.

4. The Union's election objections should be sustained as set forth, and the Respondent's objectionable conduct is sufficient to warrant the conducting of a rerun election.

## REMEDY

Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

Further, having found that certain of the Union's election objections are meritorious and that the Respondent's objectionable conduct is sufficient to warrant setting aside the election, I shall recommend that the results of the previous election be set aside and that the representation case be remanded to the Regional Director for the purpose of conducting a rerun election.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

## ORDER

The Respondent, David G. Cubitt and Brenda Cubitt, a California Partnership, d/b/a Grass Valley Grocery Outlet, Grass Valley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their interest in or activity on behalf of the Union.

(b) Disrupting or interfering with meetings or discussions between union representatives and employees in the parking lot during nonwork time, or at other times and places where such discussions may lawfully be conducted.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."[16] Cop-

[10] See *Food for Less*, 318 NLRB 646, 649 (1995), enfd. in pertinent part 95 F.3d 733 (8th Cir. 1996): The burden is on the Respondent to establish the existence of a property interest which entitles it to exclude individuals from the property; here, the Respondent did not attempt to present any such evidence.

[11] See *Indio Grocery Outlet*, 323 NLRB 1138, 1141 (1997), enfd. sub nom. *NLRB v. Calkins*, 187 F.3d 1080 (9th Cir. 1999).

[12] *Roadway Package Systems*, 302 NLRB 961 (1991); see also *Basic Metal & Salvage Co.*, 322 NLRB 462, 464 (1996).

[13] *Basic Metal*, supra; *Carry Cos. of Illinois*, 311 NLRB 1058 fn. 2, 1072–1073 (1993). The case cited by the Respondent in its brief, *Eagle-Picher Industries*, 331 NLRB 169, 182 (2000), is inapposite.

[14] Had the unlawful interrogation of Cox been the only act of election interference, I would find this to be de minimus and would not recommend a rerun election. However, I would nevertheless find that the parking lot incident alone is sufficient to set aside the election.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of the United States court of appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a

ies of the notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Further, it is recommended that Case 20–RC–17087 be remanded to the Regional Director for Region 20 for the purpose of conducting a rerun election.